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In the Matter of:

**Calvin Beckwith,**

Petitioner

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HUDBCA No. 05-D-NY-AWG07

Claim No. 770113238

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For the Secretary

### **DECISION AND ORDER**

Petitioner requested a hearing concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development (“HUD”). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), authorizes Federal agencies to utilize administrative wage garnishment as a remedy for the collection of debts owed to the United States Government.

The administrative judges of this Board have been designated to determine whether the Secretary may collect the alleged debt by administrative wage garnishment. 24 C.F.R. § 17.170(b). This hearing was conducted in accordance with the procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.170. The Secretary has the initial burden of proof to show the existence and amount of the debt. 31 C.F.R. § 285.11 (f)(8)(i). Petitioner thereafter must present by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, Petitioner may present evidence that the terms of the repayment schedule are unlawful, would cause a

financial hardship to the Petitioner, or that collection of the debt may not be pursued due to operation of law, 31 C.F.R. § 285.11 (f)(8)(ii). Pursuant to 31 C.F.R. § 285.11 (f)(10)(i), issuance of a wage withholding order was stayed until the issuance of this written decision.

### **Summary of Facts and Discussion**

On June 7, 1985, Petitioner executed and delivered to Dillon MFG Home Sales Inc. (“Dillon Home Sales”), a retail installment contract and security agreement (“note”) in the amount of \$48,763.04, for the purchase of a manufactured home that was financed by First Financial Savings & Loan Assn. (“First Financial”) and insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Secretary’s Statement, hereinafter “Secy. Stat.,” Exh. A). Petitioner failed to make payments as agreed in the contract. (Secy. Stat., ¶ 3). Consequently, First Financial assigned the contract to the United States of America in accordance with 24 C.F.R. § 201.54. (Secy. Stat., Exh. B). Petitioner is currently in default on the contract. The Secretary claims that Petitioner is indebted to the Government in the following amounts: \$6,120.43 as the unpaid principal balance as of October 31, 2004; \$7,809.06 as the unpaid interest on the principal balance at 14.50% per annum through October 31, 2004; and interest on said principal balance from November 1, 2004 until paid at 14.50%. (Secy. Stat., Exh. C, Declaration of Brian Dillon, hereinafter “Dillon Decl.,” ¶ 5).

The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is indebted to the Department in the claimed amounts. Petitioner disputes the existence and enforceability of the debt. (Petitioner’s hearing request dated October 14, 2004; Petitioner’s Statement That The Alleged Debt is Legally Unenforceable Or Has Been Paid, hereinafter “Pet. Stat.,”). Petitioner relies upon the fact that prior offsets ceased in 2004, and asserts that the debt is not legally enforceable against him because he “assumed that the debt has [sic] been paid . . . .” (Pet. Stat., ¶ 4).

HUD received offset payments from Petitioner through the Treasury Offset Program through February 3, 2004. (Dillon Decl., ¶ 5). HUD inactivated Petitioner’s account in the Treasury Offset Program on February 16, 2004, when a review of the account determined that Petitioner had established a voluntary payment plan with Treasury’s Financial Management Services. (Dillon Decl., ¶ 6). Petitioner’s last voluntary payment was received on April 12, 2004. (Dillon Decl., ¶ 7). This payment did not completely satisfy Petitioner’s debt. Petitioner’s unpaid principal and interest balance totaled \$13,929.49 as of October 31, 2004. (Dillon Decl., ¶ 4).

In support of Petitioner’s contention that this debt, which is the subject of this proceeding, has been paid in full, Petitioner asserts that “approximately 3 years ago, the Social Security Administration begin [sic] deducting certain and varied amounts from [his] . . . social security check . . . . [and that] in April of 2004, Social Security ceased garnishing or deducting any amount from his social security check . . . .” Petitioner further asserts that an employee of the HUD New York State office had told him “the debt would be paid sometime in 2004 if they continued to withhold or deduct certain

amounts from his social security check . . . .” Except for Petitioner’s assertion, there is no documentary evidence to corroborate this employee’s statement, that social security stopped offsetting in 2004 because the debt was paid, is true. Petitioner’s assertion is not evidence that the debt has been paid. Assertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past-due or enforceable. Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996).

The Secretary has the burden of going forward to prove the existence or amount of the debt. 31 C.F.R. § 285(f)(8)(i). The Secretary has carried his burden of proof by submitting: (1) a copy of the contract signed by Petitioner; (2) a document relating to the assignment of the contract; and (3) the uncontested Declaration of Brian Dillon, Director of the Albany Asset Recovery Division, that Petitioner defaulted on his obligation to repay the loan and that certain specified amounts in unpaid principal and interest are now due. (Secy. Stat., Exhs. A and B; Dillon Decl., ¶¶ 3-8). Thereafter, “Petitioner . . . must present by a preponderance of the evidence that no debt exist or that the amount of the debt is incorrect.” 31 C.F.R. § 285.11(f)(8)(ii).

Petitioner has not satisfied his burden of proof because he has neither presented documentary evidence to support his contention that the debt has been paid nor rebutted the Secretary’s evidence that the debt does in fact exist and is enforceable against him in the amounts claimed by the Secretary.

Petitioner questions the amount of the debt claimed by the Secretary. Petitioner does not contend that the debt amount claimed by the Secretary is incorrect. Rather, Petitioner asserts that, “there has been no accounting whatsoever from the Secretary of Housing and Urban Development regarding funds that were deducted from his social security check and paid to HUD on account of this alleged debt.” (Pet. Stat., ¶ 5). Petitioner has requested “a complete and full accounting . . . .” (Pet. Stat., ¶ 5). Petitioner however, does not have a right to request “a complete and full accounting” in this case. Petitioner only has a right to present evidence proving that the amount of debt is incorrect. 31 C.F.R. § 285.11(f)(8)(ii). This Board, in its Notice of Docketing, Order, and Stay of Referral, dated October 27, 2004, advised Petitioner how to request records in the possession of HUD. Specifically, the Notice of Docketing, Order, and Stay of Referral advised Petitioner that:

Documents relating to this alleged debt are not in the possession of this Board. Petitioner may request copies of these documents by writing to: Mary Bump, U.S. Department of Housing and Urban Development, Financial Operations Center, 52 Corporate Circle, Albany, NY 12203.

In any event, Petitioner has not satisfied his burden of proof because he has presented no documentary evidence proving that the amount of the debt is incorrect or rebutted the Secretary’s evidence that certain specified amounts in unpaid principal and interest are now due.

Finally, Petitioner has requested “that a hearing be held . . . if it should be determined that Petitioner’s debt is past due and legally enforceable.” Petitioner does not have a right to an oral hearing. Petitioner only has a right to an administrative hearing on the record, which has been provided to Petitioner. An administrative wage garnishment hearing may be written or oral. 31 C.F.R. § 285.11(f)(2). An oral hearing may be provided where the Board determines that the issues in dispute cannot be resolved by review of the documentary evidence. 31 C.F.R. § 285.11(f)(3)(i). When the Board determines that an oral hearing is not required, a hearing on the written record is provided. 31 C.F.R. § 285.11(f)(3)(ii). I am not persuaded that an oral hearing is necessary to adjudicate this matter because I conclude that a full determination can be reached by considering the documentary evidence. Accordingly, Petitioner’s request is Denied.

Therefore, upon due consideration of the unrebutted assertions, evidence, and declarations set forth in and attached to the Secretary’s Statement, I find that the debt which is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary.

### **ORDER**

For the reasons set forth above, the Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment is vacated.

It is hereby ORDERED that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment to the extent authorized by law.

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Jerome M. Drummond  
Administrative Judge

March 7, 2005